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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELENO FERNANDEZ-GARCIA,

Defendant.

CASE NO. 1:20CR00138-1 NONE

UNITED STATES' AMENDED SENTENCING
MEMORANDUM

DATE: August 13, 2021
TIME: 9:30 a.m.
COURT: Hon. Dale A. Drozd

Pursuant to the plea agreement, the United States of America agreed to recommend a low-end Guidelines sentence in this matter and indicated to the defense that it believed that the base offense level was 28 derived solely from a plant count of 9,654 or 965.4 kilograms.

The probation officer found that the base offense level is 30 based on the presence of an additional 200 pounds or 90.718 kilograms of processed marijuana. The processed marijuana was found in three garbage bags in some brush on a trail leading from the grow site to the road. The defendant was found above the area of the brush on the trail coming from the grow site area.

The government believes the defendant should be held accountable for the plant count alone, rather than the additional processed marijuana found in the brush. According to reports contained in discovery, the site had been used in the past for multiple years by marijuana growers. The bagged marijuana could have been processed in the past or processed before the arrival of the defendant to the

grow site. Applying a base offense level of 28 and a three-level reduction for acceptance of responsibility the Guidelines range is 70 to 87 months.

The Guidelines have not been amended to reflect the First Step Act's amendments to the safety valve provision. The probation officer therefore recommends a two-level downward variance to account for the change in the law. This would result in a Guidelines range of 57 to 71 months. If the Court is inclined to follow the probation officer's recommendation for a downward variance, the government asks the Court to follow the recommendation only if the defendant agrees to refrain from seeking an additional two-level reduction if and when the Sentencing Commission amends the Guidelines in accordance with the First Step Act.

In addition, the United States would oppose any further reduction in light of the presence of aggravating factors, namely the significant environmental damage caused by the cultivation operations that the defendant was involved in. The grow site consisted of a large number of marijuana plants (9,654) in the Basin Creek area of Stanislaus National Forest. The site had evidence of multiple years of activity based on expiration dates from expired food refuse packages. The oldest record of activity was 2018. Basin Creek is the main tributary of the Tuolumne River. The grow site was a half mile from recreational activities (hiking, fishing, camping, and swimming) and Sugar Pine Springs, a spring used for bottled water for Arrowhead and Calistoga.

The environmental impact of the cultivation operation was devastating to the land and natural resources. Evidence of 837 pounds of soluble fertilizer and 45.65 gallons of liquid fertilizer were discovered at the Basin Creek complex. The below photos depict two rodenticides located throughout the complex, containing diphacinone, a first-generation anticoagulant rodenticide, and Weeveicide, containing aluminum phosphide, which is a restricted-use fumigant pesticide.



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9 The Basin Creek complex lies upstream of several species of conservation concern, including the
10 Central Valley steelhead, federally threatened under the Endangered Species Act (ESA); chinook
11 salmon, federally threatened under the ESA; and yellow-legged frog, a candidate for listing as
12 threatened under both the federal and the California ESA.

13 Due to the complex's proximity to species of special concern, this complex and its related
14 pesticides posed a significant direct risk from bait consumption or indirectly via food web contamination
15 and trophic level bioaccumulation of toxicants. As noted in the plea agreement, a dead raccoon was
16 found within the complex. Although there was evidence that it had been scavenged, there were no
17 obvious signs that would indicate its death was attributed to predation. Furthermore, two air rifles and
18 several slingshots were found at the campsite, potentially being used to poach wildlife or as a deterrent.

19 In addition, nearly all the native vegetation within the site had been cleared to make room for the
20 marijuana plants and to build makeshift furniture for the campsites. The clearing of native plants and
21 trees posed an environmental hazard by increasing erosion and potential mobility of sediment and
22 toxicants into nearby water systems.

23 Biologists who surveyed the grow site estimated that 91,713 gallons of water per day was used to
24 irrigate the marijuana plants. This equates to over 13.8 million gallons for the 150-day marijuana
25 growing season. They also conservatively estimated that there were 2,160 pounds of trash and irrigation
26 pipe.

27 The below photos depict some of the leveled ground and structures built for sleeping, cooking,
28 and eating at the campsite discovered at the Basin Creek Complex.



It will cost the U.S. Forest Service \$45,688.00 to repair the damage sustained to the environment as a result of the marijuana cultivation activities in the Basin Creek area of the Stanislaus National Forest.

1 Probation has recommended, and the defendant has agreed, that the Court order restitution in that
2 amount.

3 In light of the foregoing, it is respectfully requested that the Court sentence the defendant to 57
4 months in custody and order restitution in the amount of \$45,688.00.
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6 Dated: August 10, 2021

PHILLIP A. TALBERT
Acting United States Attorney

8 By: /s/ Karen A. Escobar
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